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**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

WALTER T. LOGAN

Plaintiff

v.

NCO FINANCIAL SYSTEMS, INC.,

Defendant

10 4228**Case No.:****COMPLAINT AND DEMAND FOR
JURY TRIAL****(Unlawful Debt Collection Practices)**

COMPLAINT

WALTER T. LOGAN ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC. ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has an office in the State of Pennsylvania and therefore, personal jurisdiction is established.

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1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

2 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and
3 2202.

4
5 **PARTIES**

6 6. Plaintiff is a natural person residing in Virginia, with a mailing
7 address of 1315 River Drive, Beuna Vista, VA 22416.

8 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
9 1692a(3).

10 8. Defendant is a national debt collection company with corporate
11 headquarters located at 507 Prudential Road in Horsham, Pennsylvania.

12 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §
13 1692a(6) and repeatedly contacted Plaintiffs in an attempt to collect a debt.

14 10. Defendant acted through its agents, employees, officers, members,
15 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
16 representatives, and insurers.

17
18 **PRELIMINARY STATEMENT**

19 11. The Fair Debt Collection Practices Act (“FDCPA”) is a
20 comprehensive statute which prohibits a catalog of activities in connection with the
21 collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA
22 imposes civil liability on any person or entity that violates its provisions, and
23 establishes general standards of debt collector conduct, defines abuse, and provides
24 for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the
25 FDCPA declare certain rights to be provided to or claimed by debtors, forbid

1 deceitful and misleading practices, prohibit harassing and abusive tactics, and
2 proscribe unfair or unconscionable conduct, both generally and in a specific list of
3 disapproved practices.

4 12. In particular, the FDCPA broadly enumerates several practices
5 considered contrary to its stated purpose, and forbids debt collectors from taking
6 such action. The substantive heart of the FDCPA lies in three broad prohibitions.
7 First, a “debt collector may not engage in any conduct the natural consequence of
8 which is to harass, oppress, or abuse any person in connection with the collection
9 of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false,
10 deceptive, or misleading representation or means in connection with the collection
11 of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair
12 or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §
13 1692f. The FDCPA is designed to protect consumers from unscrupulous
14 collectors, whether or not there exists a valid debt, broadly prohibits unfair or
15 unconscionable collection methods, conduct which harasses, oppresses or abuses
16 any debtor, and any false, deceptive or misleading statements in connection with
17 the collection of a debt.

18 13. In enacting the FDCPA, the United States Congress found that
19 “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt
20 collection practices by many debt collectors,” which “contribute to the number of
21 personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of
22 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing
23 laws and procedures for redressing debt collection injuries to be inadequate to
24 protect consumers. 15 U.S.C. § 1692b.
25

1 14. Congress enacted the FDCPA to regulate the collection of consumer
2 debts by debt collectors. The express purposes of the FDCPA are to “eliminate
3 abusive debt collection practices by debt collectors, to insure that debt collectors
4 who refrain from using abusive debt collection practices are not competitively
5 disadvantaged, and to promote consistent State action to protect consumers against
6 debt collection abuses.” 15 U.S.C. § 1692c.

7
8 **FACTUAL ALLEGATIONS**

9 15. At all pertinent times hereto, Defendant was allegedly hired to
10 collect an alleged debt that does not, and never did, belong to Plaintiff.

11 16. Defendant first contacted Plaintiff in mid-October of 2009 by
12 telephone call.

13 17. During that call Plaintiff informed Defendant that the debt is not
14 his, and that he wished not to be contacted anymore.

15 18. Nevertheless, Defendant continued to contact Plaintiff, placing well
16 over 20 calls, and leaving numerous voice messages.

17 19. During each call, as if Defendant and its collectors had a case of
18 systematic amnesia and had never made notes of the prior calls, Plaintiff was
19 required to explain, over and over again, that the debt does not belong to him.

20 20. Defendant has resorted to contacting family members of Plaintiff in
21 an effort to collect the alleged debt that does not belong to him.

22 21. Defendant’s conduct was upon information and belief, deceptive,
23 misleading, harassing and knowingly extortive as Defendant had no basis to
24 believe Plaintiff owed a debt, kept notes of each call made and/or recorded each
25 call, and yet would not stop calling until it secured payment from Plaintiff or

received a cease and desist letter.

CONSTRUCTION OF APPLICABLE LAW

22. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

23. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

24. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less

1 experienced.” Id. The least sophisticated consumer standard serves a dual
 2 purpose in that it ensures protection of all consumers, even naive and trusting,
 3 against deceptive collection practices, and protects collectors against liability for
 4 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at
 5 1318.

6 **COUNT I**
 7 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES**
 8 **ACT**

9 25. In the actions and methods associated with its attempt to collect the
 10 disputed debt, Defendant violated the FDCPA in the following ways:

- 11 a. Communicating, in connection with the collection of the alleged
 12 debt, with a person other than the consumer, his attorney, a
 13 consumer reporting agency, the creditor, the attorney of the
 14 creditor, or the attorney of the debt collector, in violation of 15
 15 USC § 1692c(b);
- 16 b. Engaging in conduct of which the natural consequence is to harass,
 17 oppress, or abuse Plaintiff in connection with the collection of the
 18 alleged debt, in violation of 15 USC § 1692d;
- 19 c. Causing a telephone to ring or engaging Plaintiff in telephone
 20 conversation repeatedly or continuously with intent to annoy,
 21 abuse, or harass, in violation of 15 USC § 1692d(5);
- 22 d. Placing telephone calls without meaningful disclosure of the
 23 caller’s identity, in violation of 15 USC § 1692d(6);
- 24 e. Using false, deceptive, or misleading representation or means in
 25 connection with the collection of the alleged debt, in violation of
 15 USC § 1692e;

- 1 f. Using false representation or deceptive means to collect or attempt
2 to collect the alleged debt, in violation of 15 USC § 1692e(10);
- 3 g. Failing to, within five days after the initial contact with Plaintiff in
4 connection with the collection of the alleged debt, send the
5 consumer a written notice containing any of the following: the
6 amount of the debt, the name of the creditor to whom the debt is
7 owed, a statement that unless the consumer disputes the validity of
8 the debt within 30 days of the initial communication the debt will
9 be assumed to be valid, a statement that if the consumer disputes
10 the debt in writing within the 30 day period the debt collector is
11 required to verify the debt, a statement that, upon written request
12 within the 30 day period, the debt collector will provide the
13 consumer with the name and address of the original creditor, in
14 violation of 15 USC § 1692g(a), 15 USC § 1692g(a)(1), 15 USC §
15 1692g(a)(2), 15 USC § 1692g(a)(3), 15 USC § 1692g(a)(4), 15
16 USC § 1692g(a)(5).

17
18 WHEREFORE, Plaintiff, WALTER T. LOGAN, respectfully pray for a
19 judgment as follows:
20

- 21 a. All actual compensatory damages suffered pursuant to 15
22 U.S.C. § 1692k(a)(1);
- 23 b. Statutory damages of \$1,000.00 for each violation of the
24 FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
25

- 1 c. All reasonable attorneys' fees, witness fees, court costs and
2 other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.
3 § 1693k(a)(3); and
4
5 d. Any other relief deemed appropriate by this Honorable Court.
6

7 **DEMAND FOR JURY TRIAL**

8 PLEASE TAKE NOTICE that Plaintiff, WALTER T. LOGAN, demands a
9 jury trial in this case.

10
11 DATED: August 16, 2010

12 RESPECTFULLY SUBMITTED,
13 KIMMEL & SILVERMAN, P.C..

14 By: _____

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